

AMENDMENT

Request for Proposal

Amendment Date: September 6, 2012

Amendment Number: 1

Bid Event ID: EVT0001646

Closing Date: September 27, 2012 @ 2:00PM (CST)

Procurement Officer: Tami Sherley
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Item: Software, Student Information System

Agency: Kansas State School for the Blind

Period of Contract: Date of Award through September 30, 2013
(see page 28 for optional renewal periods)

Conditions:

See the attached answers to questions submitted to Procurement and Contracts concerning the above mentioned RFP.

A signed copy of this Amendment must be submitted with your bid. If your bid response has been returned, submit this Amendment by the closing date indicated above.

I (We) have read and understand this amendment and agree it is a part of my (our) bid response.

NAME OF COMPANY OR FIRM: _____

SIGNED BY: _____

TITLE: _____ DATE: _____

Amendment Number 1 EVT0001646 was recently posted to the Procurement and Contracts' Internet website. **The bid document can be downloaded by going to the following website:**

<http://www.da.ks.gov/purch/RFQ/>

It is the vendor's responsibility to monitor the Procurement and Contracts' website on a regular basis for any changes/addenda.

- Q1. In sections 1.1, 1.2, 2, 3, 4 & 5.1 of the Hosting_Maintenance_and_Support_Matrix_-_Attachment_B document "hosting" is referenced.
- a. Point of clarification: Is the "Hosting" referenced meant to be an ASP hosting or a Managed Services requirement/solution?
 - b. If it is ASP Hosting can the vendor add an optional Managed Services proposal to the response for review?
- A1. a. **"Hosting" was intended to refer to the underlying service necessary to deliver the specified application requirements through a Software as a Services (SaaS) delivery mechanism. Please refer to NIST SP-800-145 for further definitions of SaaS and related terminology. ASP hosting is not requested.**
- b. **Managed services can and should be proposed within the scope of delivering the specified application requirements via a SaaS mechanism.**
- Q2. On pages 21-24, Sections 3.63, 3.64, 3.65, 3.66 subsections A – D (inclusive) the Software Code & Intellectual Property Rights are required for response to the bid and becomes available to the State of Kansas.
- a. As a vendor we are willing to make Source Code available for a fee.
 - i. Is the entity or state purchasing via the State of Kansas willing to pay that fee in addition to any annual fees for required updates if the contract is awarded to that vendor? – This fee is not included as part of our standard proposals.
 - b. Since our system is proprietary, copyrighted & trademarked and not considered "open source" by industry standards does all verbiage from the sections, noted above, apply to that single entity represented by the State of Kansas? i.e. the State of Kansas is not purchasing for state use outside of the single entity: Kansas School for the Deaf and Kansas School for the Blind so would the full ownership of the proprietary system be enforced with all inclusions as put forth by the state?
- A2. **Only software code and intellectual property rights that fall under the scope of a "Work For Hire" under federal copyright law are affected by 3.63 and 3.64. Preexisting software code that is being licensed for use by the Agency does not qualify as a "Work For Hire." New software code created explicitly for the Agency will be considered a "Work For Hire" and become the intellectual property of the Agency, and no additional fee is permissible in this scenario because the Agency paid for the development of the software code. This is evident by phrasing such as "developed or accumulated ... under this contract" and "original software ... developed or created ... under this contract." The Agency is requesting that no or minimal "Work For Hire" software code be created.**
- a. **Preexisting software source code is not required to be made available to the Agency, except in the event of bankruptcy or dissolution of the vendor corporation such that it would result in the Agency's loss of access to essential data stored in proprietary formats. This is the reason for the escrow clause. If the vendor does not already have an escrow mechanism establish for such a scenario, then the State requires an escrow or some equivalent protection measure to be put in place.**
 - i. **The Agency is not willing to pay any additional recurring fees for access to software code created as a "Work For Hire." Under federal law, a "Work For Hire" becomes the intellectual property of the Agency and the vendor will**

have no claim to ongoing royalties. The Agency is willing to pay minimal recurring fees for the protections offered by an escrow service for preexisting proprietary software code.

- b. Any and all real or intellectual property rights of an Agency of the State of Kansas belong by extension to the State of Kansas. These clauses are included as part of many state contracts involving software and are not intended to infringe on the intellectual property rights related to preexisting software code. The use of preexisting proprietary software code disclosed from escrow as a result of a qualified "Release Condition" will be used solely for business continuity of existing system as defined in 3.66(D)(4) and may be transferred to any Agency or other agent of the State of Kansas if allowed by law.**

- Q3. Does the Kansas School for the Deaf and the Kansas School for the Blind plan to pay for these services related to Source Code and escrow?**
- A3. The Agency is willing to pay a minimal amount for escrow services to ensure business continuity. Vendors are invited to propose alternative measures that provide an equivalent level of protection for the Agency.**